

### REMARKS

Claims 1-7 have been canceled without prejudice, and Applicants reserve the opportunity to present these claims in a continuation application. Dependent claim 32 has been amended into independent form without any substantive changes. No new issues are raised by the remarks herein. Rather, Applicants seek to clarify the reasons for patentability previously set forth in the Response dated October 13, 2006.

Accordingly, Applicant respectfully requests that this Amendment be entered and considered in accordance with 37 CFR § 1.116 because this Amendment (a) does not raise new issues that would require further consideration and (b) does not raise issues of new matter.

### Allowed Subject Matter

Claims 25-31 remain in their allowed form.

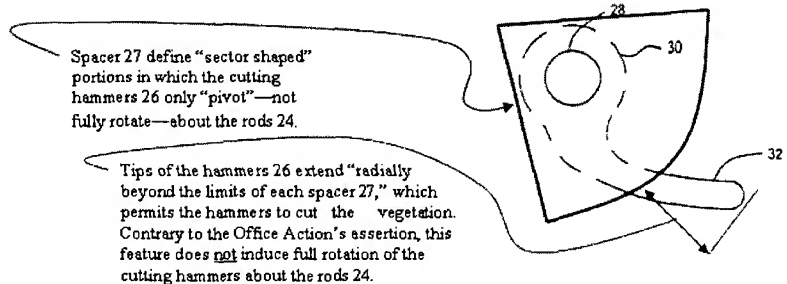
### Edwards's Cutting Hammers 26 Merely Pivot—Not Fully Revolve—About The Rods 24

Independent claim 11 was rejected under 35 U.S.C. § 102(b) as being anticipated by Edwards (U.S. 6,484,811). Applicants respectfully submit that Edwards fails to disclose all of the claim elements of independent claim 11.

In particular, independent claim 11 describes that “during operation of the apparatus, the first soil fracturing means fully revolves about the first holding means relative to the carrier.” Edwards fails to disclose these features because Edwards's cutting hammers 26 only “pivot[] over a limited range” during operation of the mulching unit 20. (See Edwards at col. 1, lines 38-45; FIG. 1.) Edward's FIG. 1, which depicts the mulching unit 20 in its operable form, shows that the cutting hammers 26 are enclosed by “sector shaped” spacers 27 that limit the hammers 26 to a “pivot[ing]” motion during operation of the mulching unit 20. (See Edwards at col. 1, lines 38-45; FIG. 1.) The Office Action ignores Edwards's express teaching that the cutting hammers 26 merely “pivot” about the support rods 24 during operation. Instead, the Office Action assumes that the cutting hammers 26 “fully rotat[e]” about the support rods 24. To support this mistaken assumption, the Office Action refers to “Edwards in column 1, lines 42-45, [which] specifically states that centrifugal force causes each of the hammers to pivot radially

beyond the limits of each spacer 27, and is therefore considered to meet the limitation of each tine fully rotating about the shaft.” (Final Office Action at page 2.)

The Office Action misunderstands Edwards’s teaching. First, this exact sentence in Edwards explains that the cutting hammers 26 merely “pivot” (e.g., “to *pivot* radially beyond the limits). Nothing in Edwards contradicts this accurate description of the hammer motion within the confines of the spacers 27. Second, the Office Action misunderstands the meaning of the phrase “radially beyond.” Indeed, each cutting hammer 26 does extend “*radially beyond* the limits of each spacer 27” to reach outside the circumferential surface of the spacer 27 (and thereby engage the vegetation), but this does not mean that cutting hammers 26 do anything more than “pivot” within the confines of the spacers 27. An illustration of a “radially beyond” configuration is shown at right.<sup>1</sup> The centrifugal force described in Edwards might ensure that the tip of each cutting hammer 26 remains outside the spacer 27



circumference (e.g., radially beyond the spacer 27), but the centrifugal force does not induce the cutting hammers 26 to fully rotate within the confines of the spacers 27.

Accordingly, Applicants respectfully request reconsideration of independent claim 11 in light of Edward’s lack of disclosure. Applicants respectfully submit that claim 11 is patentable over Edwards and all other references cited in the record. Dependent claims 12-17 and 33 are patentable for at least the same reasons as independent claim 11.

#### Applicants Traverse The “Official Notice” In The Final Office Action

The Final Office Action indicated that the Examiner was taking “Official Notice” for the rejection of dependent claims 32-33 (note that dependent claim 32 has been amended into independent form). According to the MPEP, the attempt to take Official Notice in the Final Office Action is improper in the context of the claims at issue. “While ‘official notice’ may be

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<sup>1</sup> Applicants note that this illustration not necessarily drawn to scale or proportion, but rather is intended to roughly depict how Edwards’s cutting hammers 26 extend “radially beyond” the spacers 27.

relied on, these circumstances *should be rare* when an application is *under final rejection*.”

MPEP §2144.03(A) (emphasis added). Here, Applicants traverse this instance of Official Notice in the Final Office Action and request that the Examiner either withdraw such attempts to take Official Notice or provide “documentary evidence” in the next communication, as required by MPEP §2144.03(C).

Applicants specifically traverse the attempt to take “Official Notice that it is known in the art [] to use a planetary gear system as a drive means (for example in vehicle drive systems).” First, such a statement is not commensurate with the subject matter of claim 32, which describes that an “apparatus for aerating soil” includes “a planetary gear system *coupled to the first and second shafts* so as *to drive the first set of tines to rotate fully about the first shaft* and *to drive the second set of tines to rotate fully about the second shaft*.” Taking Official Notice to an abstract and general conclusion does not anticipate the particular combination of all claim elements recited in claim 32. Second, it appears that this Official Notice is in essence an argument that one having ordinary skill in the art would find it obvious to substitute Edwards’s simple rotating mulching unit 20 with the claimed planetary gear system. However, the Office Action sets forth no motivation in the prior art for such a modification to Edwards’s mulching apparatus 10. Further, the Office Action fails to explain a reasonable expectation of success for such a proposed substitution, especially in light of the “pivoting” motion of the cutting hammers 26 (e.g., Edwards’s cutting hammers 26 do not rotate about the support rods 24, so a planetary gear system would not necessarily provide the pivoting “flail” motion desired by Edwards).

Simply put, the Final Office Action failed to set forth “some form of evidence in the record to support an assertion of common knowledge.” MPEP § 2144.03(B); *see also In re Lee*, 277 F.3d 1338, 1344-45 (Fed. Cir. 2002). Applicants respectfully request that the Examiner either withdraw such attempts to take Official Notice or provide “documentary evidence” in the next communication, as required by MPEP § 2144.03(C).

Applicant submits that claim 32 is in condition for allowance.

It is believed that all of the pending claims have been addressed and are in condition for allowance. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any

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or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

No fee is believed to be due. If necessary, please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

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